IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

C.W.P. No. 16584 of 2005
Date of Decision: 30.7.2007

Singh Legal Foundation,Chandigarh.

..... Petitioner through
Dr.M.S.Rahi, Advocate.

Versus

Union of India.

..... Respondent through Shri
Gopal Subramanium,
Addl.Solicitor General
of India with Sarv Shri
Devansh A.Mohta,
T.Srinnasamurthy and
Gurpreet Singh, Advocates.

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE

This is a petition under Articles 226/227 of the Constitution of India with the following substantive prayer:-

"(i) Writ of Mandamus or any other Writ Petition, Order or direction be issued to the respondent to protect the Fundamental Rights of the citizens of India within the country and abroad in the interest of justice."

The petitioner has made the above prayer in the context of the following facts:-

The Government of France promulgated French Law No.2004-228 on 15.3.2004 prohibiting use of conspicuous religious symbols in government funded schools and also issued a circular dated 6.12.2005 disabling the wearing of turbans while being photographed for issuance of a driving licence.

As per the petitioner, the French Government, being a signatory to the United Nations Covenants, is duty-bound to protect human rights and human dignity and the law so promulgated amounted to discrimination and violation of human rights, as also various covenants of the United Nations. A specific reference has been made to the case of one Ranjit Singh, who is living in France as an Indian citizen and, who had gone to that country in 1991 and he being a baptized Sikh, was being discriminated against solely because of his religious convictions. Besides, the children are being forced to disown their religious symbols if they have to take education in government schools. Other such instances of discrimination have also been cited.

In response to the writ petition, a return has been filed by the Union of India explaining that the aforementioned law has been framed by the Government of France on the `principle of Laicite' (i.e. secularism -implying separation of State from religion). It was not aimed at any particular community and was applied to every group of religion living in that country. The Government of France promulgated this legislation after

considerable debate.

Considering the sensitivity of the implementation of the law, particularly in the context of Sikhs, the matter was immediately taken up by the Government of India before the French authorities. Such an exercise commenced even before the law came into force and after coming into existence of the same, it was followed up with the French authorities by the external Affairs Minister, Foreign secretary and Joint Secretary (West Europe) as well as by the Indian Embassy in Paris. The issue was further taken up by the Ministry of external Affairs with the French Foreign Minister, Mr.Dominique De Villepin during his visit to India in February,2004 and subsequently with the French Foreign Minister, Mr.Michael Barnier in October,2004. The Prime Minister of India also discussed the issue with French President,Mr. Jacques Chirac during the latter's visit to India in February, 2006. In January,2005, the Ministry of External Affairs had taken up the matter with the French Ambassador in India. In December,2005 and January,2006, the issue was discussed by the Foreign Secretary in New Delhi with the French Ambassador and other officials of the French foreign office. Very recently, the matter was once again discussed by the National Security Adviser with Shri Maurice Gourdault Montagne, Diplomatic Adviser to French President, Shri Chirac during their meeting in Paris on February 9,2007.

The French authorities assured that they understood the sentiments of the Indian government on the issue, but reiterated its resolve to follow the principle whereby all the people had the freedom to practice

all religions in France and that the measure adopted by them was intended to promote secular integration and not secular discrimination. It was also stated that during the aforementioned meeting, it transpired that French Government was determined to extricate these symbols from society after two French journalists were held hostage in Iraq and their release was linked to a demand for the removal of ban on headscarf. The ban was imposed with a view to follow uniform application to advance secular society as was originally intended in the promulgation of laws in France. It was made clear that despite the apprehension of the Indian Government and Sikhs in particular, the law was uniformly applied to all religions and that Sikhs were not precluded from practising their faith otherwise. Besides, the matter had been taken up before the Council of States, which is the highest Administrative and Judicial Body of France, and it has upheld the legislation. Further, the Council of States also held that this legislation was not contrary to Article 9 (Freedom of Religion) and Article 14 (non-discrimination) of the European convention on the ground that, ".....The compulsion to remove (head bare) is only for the purpose of producing a bare head photograph and does not involve different treatment for the people of Sikh faith as compared to other applicants."

We have heard the learned counsel for the parties at length in the backdrop of the controversy raised before us.

As noticed above, the solitary substantive prayer made by the petitioner is that a direction be issued to the Government of India to protect the fundamental rights of the citizens of India within the country and abroad

in the interest of justice. After having perused the affidavit on behalf of the respondent, we are satisfied that the Union of India has taken all such steps which are in its power to take up the issue with the French Government. Needless to say, the sovereign governments have the right to legislate laws for their citizens, as also the persons, who are residing in their countries.

The writs and orders issued by the Courts are subject to the territorial restraints and, therefore, nothing more can be said about the controversy raised by the petitioner as the laws of sovereign countries have to be tested before the Courts which are subject to such sovereign domain.

The jurisdiction of a sovereign State connotes, "essentially the extent of each State's right to regulate conduct on the consequences of events". A State may regulate its jurisdiction by legislations or by taking recourse to the executive or administrative action and its jurisdiction concerns both international law and internal law. The power to exercise jurisdiction includes, both the power to prescribe rules and power to enforce them.

On the basis of the above discussion, we do not find any merit in the prayer of the petitioner and dismiss the writ petition.

(Vijender Jain)
Chief Justice

July 30,2007
"SCM"

(Mahesh Grover)
Judge